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10/644,435

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Daniel Brian Tan

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EXAMINER

PATTERSON, MARC A

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DANIEL BRIAN TAN

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Appeal 2010-003717  
Application 10/644,435  
Technology Center 1700

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Before ADRIENE LEPIANE HANLON, CHARLES. F. WARREN, AND  
MARK NAGUMO, *Administrative Patent Judges*.

NAGUMO, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Introduction<sup>1</sup>

Daniel Brian Tan (“Tan”) timely appeals under 35 U.S.C. § 134(a) from the final rejection<sup>2</sup> of claims 1-7, 9-29, and 31-42, which are all of the pending claims. We have jurisdiction. 35 U.S.C. § 6. We REVERSE, substantially for the reasons well-stated by Tan.

The subject matter on appeal relates to plastic bags such as those now commonly provided by stores to customers for taking their purchases home. The claimed bags are made of a blend of polyethylenes having different densities and molecular weights. The bags are said to be durable, break-resistant, and easily produced. (Spec. 4, ll. 2-3.) Moreover, the bags are described as being self-opening—that is, as they are pulled from the dispensing rack or hook, they tend to open. (*Id.* at 1, ll. 4-5).

Representative Claim 1 reads:

1. A self-opening bag stack comprising: a plurality of stacked polyethylene film bags comprising about  
40-48 wt. % high density, high molecular weight polyethylene,  
12-20 wt. % high density, medium molecular weight polyethylene,  
20-30 wt. % linear low density polyethylene having a melt index ranging from 0.10-0.30 gm/10 minutes,

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<sup>1</sup> Application 10/644,435, *Self Opening Bag Stack and Method of Making Same*, filed 19 August 2003. The specification is cited as “Spec.” The real party in interest is listed as the inventor, Daniel Brian Tan (Appeal Brief, filed 24 June 2009 (“Br.”), 2.)

<sup>2</sup> Office action mailed 17 June 2008.

0-8 wt. % color concentrate, releasably adhered together  
in substantial registration;

each of said bags including front and rear polyethylene  
film walls, each of said front and rear walls having first  
and second side edges, a top edge and a bottom edge; said  
front and rear walls being integrally joined at their first and  
second side edges and secured together at their bottom  
edges and defining an open mouth portion adjacent said  
top edges; and at least an upper portion of an outer surface  
of said front and rear walls of each of said bags having  
been corona treated.

(Claims App., Br. 26; indentation and paragraphing added.)

The Examiner has maintained the following grounds of rejection:<sup>3</sup>

- A. Claims 1, 4-7, 9-23, 26-29, and 31-42 stand rejected under  
35 U.S.C. § 103(a) in view of the combined teachings of  
Huang,<sup>4</sup> Williams,<sup>5</sup> and Harris.<sup>6</sup>
- B. Claims 2, 3, 24, and 25 stand rejected under 35 U.S.C. § 103(a)  
in view of the combined teachings of Huang, Williams, Harris,  
and Mawson.<sup>7</sup>

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<sup>3</sup> Examiner's Answer mailed 29 October 2009 ("Ans.").

<sup>4</sup> Frank F.J. Huang and Daniel Huang, *Pack of Self-Opening Plastic Bags*, U.S. Patent 6,435,350 B1 (20 August 2002), based on an application filed 23 March 1998.

<sup>5</sup> John W. Williams, *Thermoplastic Handled Bags and Their Method of Manufacture*, U.S. Patent 5,078,667 (1992).

<sup>6</sup> Michael G. Harris, *High Density Polyethylene Melt Blends for Improved Stress Crack Resistance in Pipe*, U.S. Patent 6,822,051 (23 November 2004), based on an application filed 29 March 2002.

<sup>7</sup> Simon Mawson et al., *Polymerization Process*, U.S. Patent Application Publication 2002/0107342 A1 (8 August 2002).

B. Discussion

Findings of fact throughout this Opinion are supported by a preponderance of the evidence of record.

The Examiner relies on Huang for general disclosure of self-opening plastic bags. (Ans. 3.) Recognizing that Huang does not disclose or suggest the polyethylene blend recited in the claims (*id.* at 4, ll. 1-2), the Examiner turns to Williams for evidence that blends of high density polyethylene and linear low density polyethylene are known to be useful for making plastic bags (*id.* at 4, ll. 3-8). Apparently recognizing further that Williams does not disclose or suggest blends of high density high molecular weight polyethylene and high density medium molecular weight polyethylene, the Examiner turns to Harris, which, according to the Examiner, teaches that such HD-HMW-PE:HD-MMW-PE<sup>8</sup> blends are useful for making heavy duty bags. (Ans. 4, ll. 8-14, citing Harris, col. 7, ll. 16-24 and col. 4, ll. 56-60.)

The Examiner concludes that it would have been obvious to use blends taught by Williams and Harris as being useful in bags when making bags as taught by Huang. (*Id.* at 4, ll. 15-21.) The Examiner finds further that Harris does not describe the proportions of high molecular weight polyethylene to medium molecular weight polyethylene recited in the claims, but argues that it would have been a matter of routine optimization in

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<sup>8</sup> Throughout this Opinion, we exchange the “high density” and molecular weight designations freely, without intending any difference in the material designated.

view of Harris's teachings that the proportions vary according to the intended use of the plastic. (*Id.* at 5, ll. 1-7, *citing* Harris col. 7, ll. 16-24.)

As Tan points out (Br. 16), the Examiner's findings regarding Harris are erroneous. Harris indeed teaches blends of bimodal HMW-HDPE with MMW-HDPE, but the end use is "[f]or pipe and/or pipe fittings, especially for profile and corrugated pipe." (Harris, col. 7, ll. 25-27; *see also* col. 2, ll. 20-24.) Harris also describes the bimodal HMW-HDPE resins suitable for use in the pipe-compositions as being film-grade resins generally used to make T-shirt bags, trash can liners, and heavy duty bags. (*Id.* at col. 4, ll. 55-59.) But this teaching is strictly a characterization of the HMW-HDPE resins themselves. The Examiner's conclusion that Harris teaches that blends of HMW-PE with MMW-PE are useful for bags is without credible evidentiary basis. Moreover, the Examiner has failed to support with credible evidence the conclusion that the ranges of polyethylene blends recited in the claims would have been the result of optimization, routine or otherwise. We need not give weight to "mere examiner argument," any more than we need give weight to "mere attorney argument."

The Examiner does not rely on Mawson for any teachings that might cure the deficiencies of Harris. Accordingly, we REVERSE the rejections.

### C. Order

We REVERSE the rejection of claims 1, 4-7, 9-23, 26-29, and 31-42 under 35 U.S.C. § 103(a) in view of the combined teachings of Huang Williams, and Harris.

Appeal 2010-003717  
Application 10/644,435

We REVERSE the rejection of claims 2, 3, 24, and 25 under 35 U.S.C. § 103(a) in view of the combined teachings of Huang, Williams, Harris, and Mawson.

REVERSED

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